



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

PO Box 4736, HIGGINS ACT 2615, Telephone (02) 6254 2961

Email mcconnell@ffdlr.org.au Web <http://ffdlr.org.au>

NEWSLETTER

August 08

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NEXT Meeting

Thursday 28 August 2008

at 7.30pm

Venue: St Ninian's Uniting Church, cnr
Mouat and Brigalow Sts,
Lyneham.

Refreshments will follow

Editorial

During this month there were news reports of the biggest ecstasy drug bust ever. A huge haul of 4.4 tonnes of tablets.

The operation involved 400 AFP members, 10,000 hours of surveillance and 185,000 telephone intercepts. *"Our intelligence indicates that this syndicate is alleged to be involved in something in the order of 60% of importations coming into south-eastern Australia,"* AFP Commissioner Mick Keelty said. *"This is a major disruption to transnational organised crime, both for this country and abroad."*

The AFP executed 45 search warrants across Victoria, South Australia, Tasmania and New South Wales as part of the joint investigation. Keelty said that a seizure of this magnitude was a major victory in the fight to stop drug syndicates supplying Australia's youth with extremely harmful substances.

16 arrests were made in Australia.

Secretary of Customs, Michael Carmody told ABC's The World Today *"Listen, this is a great result. This is what makes getting up in the morning and coming to work worthwhile. Just look for more of it."*

Robert McClelland, Federal Attorney-General said on ABC Lateline *"There is no question, as I say, the success of this operation will make our streets just that little more safer."*

Surely they are right? A seizure of 60% of importations of ecstasy should make a difference. After all that figure approaches what UK experts say is needed to make a difference to the drug market. Perhaps that is the end of ecstasy in Australia?

A closer examination is however called for.

Over 12 months ago, in June 2007, the AFP received a tip-off that a shipment of canned tomatoes from Italy might contain more than tomatoes. Together with Customs the AFP inspected the shipment and found the 4.4 tonnes of ecstasy tablets.

AFP substituted an inert substance and waited to see who picked up the shipment. They watched and waited but no one came.

In July this year Customs and AFP detected 3 bags of cocaine which triggered the arrests and search warrants. The AFP media release implies that it was the same syndicate connected with both shipments.

Many are skeptical about the AFP and Customs claims about the effects on the market. People like Gino Vumbacca from the Australian National Council on Drugs who told ABC's Lateline that the ANCD had not seen any change in the drug market, Associate Professor John Fitzgerald from the University of Melbourne's School of Population Health who expressed doubts to ABC's AM that the huge seizure will have much of an impact on supply, David Caldicott, an Adelaide emergency doctor with a special interest in illegal drugs, doubted on that same AM program that it would have much of an impact on demand and supply.

This extraordinary case of detection of 4.4 tonnes of ecstasy can be a useful indicator of the effectiveness of law enforcement. Some 12 months have passed since the seizure which is sufficient time to observe the effect.

As has been said before, a large seizure of drugs usually is an indicator of the quantity of drugs that are available to the street market.

History shows us that it generally does not indicate any effect on the market. For example the largest seizure of heroin off the Port Macquarie coast in October 1998 made no difference to the heroin market (during that year a massive 509kg of heroin was seized). None of the news reports of the largest seizure of this drug or that drug has been followed by a supply shortage on the street. Granted, in some few cases, there may have been a short lived temporary shortage, but the drug trade has continued.

The price, purity and reported availability of the drugs on the street are also excellent indicators of the strength of the market. Even after that large seizure of heroin the price kept falling and the purity kept increasing. For that drug another indicator of the strength of the market was the overdose deaths and they kept increasing.

The issue is not that police and customs should not have made those seizures and arrests. Of course they should have. But can they be excused for misleading claims? Large seizures gives the appearance of success, it gives them kudos, and can gain them more resources – funds, staff, equipment, technology, increased power or authority etc. It would be a brave organisation that confessed that their effectiveness was limited. But as public servants they should be obliged to give frank and fearless advice.

And few of their political masters look beyond the hype and question whether or not this is the best and most effective use of those resources.

Perhaps it is because they have not fully grasped the issues. Perhaps it is because they benefit from the reflected glory of the seizures. Perhaps it is too hard for them – after all, the debate on illicit drugs is the debate that is never objectively conducted.

Few appreciate what is at stake: corruption of officials; reduction of our freedoms and civil liberties; huge financial and social costs and the unnecessary sacrifice of our young people. But all guard the status quo vigorously.

The path to change (or should one say enlightenment) is certainly a difficult one.

Ecstasy just another in long line of national pastimes

Sydney Morning Herald, August 11, 2008

World record hauls of ecstasy have occurred in Australia since 2004 but nothing approaches the 4.4 tonnes detected in tomato cans in June in Melbourne with a street value of \$440 million.

It seems that despite extensive education and interdiction, Australia's youth have embraced this drug like no other. The market remains buoyant.

As a GP in Kings Cross, I have seen hundreds of ecstasy users over the past decade, and despite horror stories in the press most take this drug with impunity.

The phenomenon of "Eckie Monday" (the weekend "come-down" from a binge requiring a medical certificate for work absence) is common. So, too, is the weight loss and lack of vitality in habitual users who dance themselves into exhaustion and grind their teeth in clubs all over Sydney. Early mornings in the Cross provide a cavalcade of burnt-out E users heading home after an all-nighter.

But for the most part they do not suffer serious medical problems. A few may develop overheating or hyperthermia and require a short admission for hydration with a litre of fluid or two intravenously in an emergency department. Seizures and drug-induced psychosis do happen, but at a very low rate. Even this outcome does little to dissuade users to quit their drug of choice. Sure there are horror stories of PMA (para methoxy amphetamine), a cheaper, dangerous substitute for ecstasy causing sudden death, but this is so rare as to not affect demand.

Ecstasy testing kits are now available over the internet. These testing kits are common in Europe outside clubs and should be encouraged here.

Young people are educated on the risks and dangers of all illicit drugs. Most schools now have excellent drug education programs covering all illicit drugs in Australia. Children use the internet to plug holes in their knowledge and successive government programs portraying ecstasy as a danger have done little to reduce ecstasy use in Australia.

Most young users have observed their friends taking the drug without adverse effects. Combine this with the

boundless optimism of youth and an unshakeable belief that they are bulletproof and you have a recipe for an explosion in demand.

Drug use follows fashion cycles, and in many ways governments' demonisation, with their horrific video footage, entrenches the inevitable generational warfare between the young and their parent's generation.

It is unusual in my experience for a young person to request treatment for ecstasy abuse unless they are dragged kicking and screaming by a concerned parent. They do not want treatment if their recreational use is limited to weekend recreation, and will show a therapist bored disinterest.

Price is a keen indicator of availability and none of my patients ever complain of difficulty obtaining ecstasy. So we can conclude that despite these huge hauls by federal police and the national crime authority, significant stockpiling must occur around the country.

Drug trafficking will go on as long as there is demand. Australia has always been at the forefront of illicit drug use worldwide. In 1936 we had the highest use per capita in the Western world of cocaine and heroin. And now we appear to have won a gold medal for ecstasy. Very little has changed.

Raymond Seidler, Addiction medicine specialist, Potts Point

Ex-drugs policy director calls for legalisation

Duncan Campbell, The Guardian, August 13 2008

A former senior civil servant who was responsible for coordinating the government's anti-drugs policy now believes that legalisation would be less harmful than the current strategy. Julian Critchley, the former director of the Cabinet Office's anti-drugs unit, also said that his views were shared by the "overwhelming majority" of professionals in the field, including police officers, health workers and members of the government.

He also claimed that New Labour's policy on drugs was based on what was thought would play well with the Daily Mail readership, regardless of evidence of what worked. Downing Street policy advisers were said to have suggested stunts such as sending boats down the Thames to catch smugglers to coincide with policy announcements.

Critchley - not to be confused with the late Tory MP of the same name - was director of the UK Anti-Drug Coordination Unit in the Cabinet Office, with the job of coordinating government policy across departments and supporting the then drugs Tsar, Keith Hellawell. In a contribution to the debate on the "war on drugs" on a BBC website, Critchley spelled out his reasons for now supporting legalisation and claimed the government's position is hypocritical. Yesterday Critchley, who is now a teacher, confirmed that the blog posting accurately conveyed his views.

"I joined the unit more or less agnostic on drugs policy, being personally opposed to drug use, but open-minded about the best way to deal with the problem," he wrote on the blog. "I was certainly not inclined to decriminalise. However, during my time in the unit, as I

saw more and more evidence of 'what works', to quote New Labour's mantra of the time, it became apparent to me that ... enforcement and supply-side interventions were largely pointless. They have no significant, lasting impact on the availability, affordability or use of drugs."

He said that his views were widely held in the government but rarely expressed in public. "I think what was truly depressing about my time in UKADCU was that the overwhelming majority of professionals I met, including those from the police, the health service, the government and voluntary sectors held the same view: the illegality of drugs causes far more problems for society and the individual than it solves. Yet publicly, all those intelligent, knowledgeable people were forced to repeat the nonsensical mantra that the government would be 'tough on drugs', even though they all knew the government's policy was actually causing harm."

Critchley believed that the benefits to society of the fall in crime as a result of legalisation would be dramatic. "Tobacco is a legal drug, whose use is declining, and precisely because it is legal, its users are far more amenable to government control, education programmes and taxation." Anyone who wished to purchase the drug of their choice could already do so. "The idea that many people are holding back solely because of a law which they know is already unenforceable is simply ridiculous."

His intervention was welcomed yesterday by drugs law reformers. "Julian Critchley is one of the brave few to tell the truth about the failure of prohibition and the need to replace it with a system of regulation," said Danny Kushlick, of the Transform Drug Policy Foundation. "It is truly shameful that there are so many more who know that the war on drugs is overwhelmingly counterproductive, and yet continue to remain silent, tacitly endorsing a policy that they know creates misery,

Annual Remembrance Ceremony

Please make a note in your diary for

- ACT Remembrance Ceremony
Monday **20 October 2008**
12:30pm.
- Sydney Remembrance Ceremony
Saturday **18 October 2008,**
6:00pm.

degradation and death for millions across the globe."

Published letters from The Canberra Times

A fresh look at our illicit drug problem is overdue

July 27, 2008.

Each of the drugs selected for prohibition has a legal and regulated drug with similar characteristics, for instance, heroin and morphine, or cannabis and tobacco.

Use and abuse of the illicit drug has increased at a markedly higher rate than has been the case with the legal and regulated drug with similar characteristics, yet there was no hint in the legislative process that prohibited them that such an increase should be anticipated. Quite the reverse: prohibition was hoped would reduce use.

Australia was importing 45 kilos of heroin pa before prohibition in 1953, and by 1999 illegal importation was estimated at 6,700 kilos pa.

With the possible exception of laws against prostitution, the laws prohibiting drugs are the only laws carrying criminal sanctions for actions that do not fall within one of three clear categories: physical damage to another (eg assault or murder); damage to another's property (eg theft or fraud); or breaking regulations that facilitate living (eg road rules or quarantine regulations).

The lack of principle and the random nature of the selection of drugs for prohibition is undoubtedly one reason for the increase in incidence of use in comparison to legal and regulated drugs, and the enormous profits that have accrued to producers and distributors as a result of prohibition is clearly another.

Restore principle to the criminal law, and legalise and regulate illicit drugs.

Peter Watney

Law change a folly

10/8/2008

I WAS astonished to hear the president of the Law Society of the ACT supporting changes to the law which mean that Australian Federal Police officers in "undercover" operations can now break the law.

The legal profession is supposed to be a bulwark against the worst excesses of the state, so let's make it clear that the president doesn't speak for me.

The Attorney General said we need this legislation to keep up with the police in NSW and other states.

Has it escaped attention that these states have had major inquiries and royal commissions into police corruption and that they continue to have major problems, particularly in areas in which "undercover" police operate, namely drugs, vice, prostitution, firearms.

These police, by definition, do not wear uniforms and are disguised and the obvious temptations must be enormous. So it seems complete folly to then provide them with an indemnity from prosecution for breaking the law they are supposed to be upholding.

Jennifer Saunders, Perkins and Saunders barrister and solicitor, Civic

Drug laws need anti-corruption checks and balances

11/08/2008

The passing of the controlled operations law for police ("Illegal deeds all in a day's work", August 8, p3) is concerning.

There is no guarantee that it will make a difference to the drug trade and it opens the way for increased corruption.

There appears to be no noticeable difference to the drug trade in NSW where this law has been in place for some time.

The Mark Standen case demonstrates the potential for corruption. At best there will be an increase in the number of arrests of users because the ACT is at the tail end of the supply chain.

Currently, of all the arrests for drug offences in the ACT, 84 per cent are of users. And any void created by arrests of (probably) small-time user/dealers, will quickly be filled by the next desperate user.

Greens MLA Deb Foskey is correct in saying that the law lacks suitable anti-corruption mechanisms.

Simply reporting to the minister annually or trusting AFP-controlled bodies to police their own is not sufficient assurance self-interest is almost always likely to win out.

If the Government seriously believed this legislation would make a difference, it would introduce objective performance measures to demonstrate the effectiveness or otherwise of these increased police powers.

For example, measures that would show real reductions in the ACT drug market, reductions in the availability of drugs on the street, and reductions in the Mr Bigs operating in the ACT.

B.McConnell

Here's to crime

13/8/2008

Who remembers that wonderful line in Rumpole of the Bailey "Here's to crime"? Jennifer Saunders certainly does (Letters, August 10), and, good luck to her because all of us have to put bread on the table.

What troubles me, and I dare say victims of crime, is Saunders clearly is an aficionado of the insufferable Stuart Littlemore SC who publicly boasted it was a badge of honour in legal circles to secure the acquittal of a guilty person [Sydney Morning Herald, March 16, 2007, p15].

Now, correct me if I'm wide of the mark but if a properly constituted Assembly passes legislation which renders police actions previously illegal as subsequently kosher, then fellow citizens, including barristers, should be pleased. Temptations facing police most assuredly will see some of them end up where crims belong, but while there's the prospect of undermining evil and simultaneously anchoring precious elements of Saunders' profession to Planet Earth, I'll celebrate that with something better than Rumpole's cooking claret.

Patrick Jones

Crime watch

15/8/2008

Possibly after quaffing too much of Jack Pomeroy's Chateau Fleet Street, Patrick Jones (Letters, August 13), misses the point of recent criticism of the ACT's Crimes (Controlled Operations) legislation.

What Jennifer! Saunders and others are saying is that in a society in which all Members are subject equally to the rule of law, we must guard against vesting in the police

discretionary powers that, for practical purposes, amount to powers to dispense with the compliance with the law.

It is not the function of the police to make the law, or to decide by whom, and to what extent, the law is to be obeyed.

And in allowing the police such discretionary powers, corruption can flourish.

Police corruption has a long history in Australia - arguably starting from the Rum Corps.

More recent inquiries such as the Fitzgerald and Wood royal commissions, and the current difficulties in the Victoria Police, show that police corruption is still as much of a problem today as it was in John Macarthur's day.

The new ACT legislation gives oversight of its operation to the Ombudsman.

However, the Ombudsman now relies on the Australian Federal Police to investigate itself.

Thus, any claims of independent oversight are undermined by the Ombudsman lacking his own investigative capacity.

Rather than pass contentious legislation on the run-up to an election, the ACT Government should instead establish a statutory-based and independent ACT Law Reform Commission, the purpose of which would be to generally make recommendations to reform the current law. The conduct of police operations would make an ideal first commission referral.

None of this criticism detracts from the importance and difficulty of tasks that the community expects to be performed by members of its police forces.

We should bear in mind that the police deserve our support and encouragement.

Our expectations of them are high, and we should be ready to praise success as well as criticise failure.

Don Malcolmson

Police Act is fair

B. McConnell (Letters, August 11, p8) makes a number of incorrect presumptions about the nature of the ACT Government's new controlled operations law.

McConnell presumes the law is about drugs and drugs alone.

The Government's Crimes (Controlled Operations) Act 2008 is a legal framework to authorise and regulate police activity where covert means are necessary.

The Act stipulates that its powers can only be used for offences that carry a penalty of three years imprisonment or more.

Given that the overwhelming majority of the territory's serious drug offences carry penalties of three years imprisonment or more, the Act would not be used against people who are simply using illicit drugs; it would be used against people who organise drug trafficking.

McConnell implies the Act would create greater risk of police corruption.

In fact, the Act creates a legal framework that prevents corruption and increases accountability.

Every application, every authorisation and details of the completion of every operation made under the Act must be registered.

Every year a report (tabled in the Legislative Assembly) must be prepared that includes: the number of operations authorised; the criminal activities targeted by the operations; the nature of the controlled conduct used in the operations; the nature, quantity, and transmission of any illicit goods involved; details of any personal injuries or damage to property occurring as a direct result of the operation; and any arrests and prosecutions arising from the operations.

McConnell writes that the ACT should not "trust AFP-controlled bodies to police their own".

The ACT Government does no such thing.

The ACT Government has confidence in the Australian Commission for Law Enforcement Integrity, which is the Commonwealth body empowered to prevent, detect and investigate corruption in the Australian Federal Police and the Australian Crime Commission.

The commission's jurisdiction includes ACT Policing.

The commission is not controlled by the AFP it is an independent statutory body.

Simon Corbell, ACT Attorney-General

Will new legislation be effective in reducing drug trafficking?

19/08/2008 12:00:00 AM

The Attorney-General, Simon Corbell, in an attempt to discredit the views in my earlier letter, states that he is confident that the new controlled operations legislation will prevent corruption and increase accountability (Letters, August 16 and August 11).

Time will tell if his confidence is justified.

But he has failed to comment on the most important accountability issue in his response. That is the need for measures to determine whether this legislation makes

real reductions in the ACT drug market, in the availability of drugs on the street, and in the people who organise drug trafficking in the ACT.

These are matters that should be reported and tabled in the Legislative Assembly.

What will be reported is simply details of the controlled operations but not the effectiveness of those operations.

B. McConnell

I wish the Attorney-General (Letters, August 16) would get a better grip on the implications of the laws that he administers.

He seems to assure us that the new Controlled Operations Act cannot be used to entrap drug users because it applies only to "serious drug offences" carrying a penalty of three years imprisonment or more. In 2004 his same Government introduced a chapter on "serious drug offences" into the Criminal Code.

This imposes draconian penalties on scores of routine actions of ordinary drug users. Even the resale to a friend of a single ecstasy tablet that he has bought for a night out incurs a maximum penalty of 10 years. The latest legislation continues the long march of ever tougher legislation dreamed up by national committees of law enforcement officials and their compliant ministers.

Their schemes, tamely implemented in the ACT, eat away at civil liberties in the name of protecting us from serious crime.

But just who does the Government think it is protecting? It's certainly not keeping drugs from our kids.

The recently announced seizure in June last year of 4.4 tonnes of ecstasy did not cause a ripple in the Australian market. The Government is mindlessly sacrificing both our kids and the principles that underpin our legal system.

Bill Bush

Attorney General's response to editorial in July 08 Newsletter

The ACT Attorney-General wrote in response to the editorial in last month's Newsletter. His response is included in full below.

One of my goals as Minister across various portfolios over the last eight years has been to promote community involvement and engagement on important policy initiatives. I thank Families and Friends for Drug Law Reform (ACT) (FFDLR) for their comments in the past. I wish to provide my own remarks in response to the FFDLR (ACT) July 2008 Newsletter, in particular on the importance of scrutiny and accountability on the recently passed Crimes (Controlled Operations) Act 2008 (the Act).

The Act will enable police to involve themselves covertly in organised crime, under strict operational control, to gain evidence and intelligence about the criminal behaviour.

The new law will also enable ACT Police to work with police from other jurisdictions, and the Australian Crime Commission, to conduct controlled operations across State and Territory borders.

I wish to point out by that the Act is not limited to investigating drug trafficking. Controlled operations are used to investigate a range of illegal activities: illegal weapons trade, the creation and trade of child pornography, sexual servitude offences and various forms of high level corruption.

Furthermore, powers under the Act can only be used for offences that carry a penalty of 3 years imprisonment or more. The Act would not be used against people who are simply using illicit drugs; it would be used against people who organise drug trafficking.

The FFDLR (ACT) Newsletter suggested that the Act would create greater risk of police corruption. In fact, the Act creates a legal framework that prevents corruption and increases accountability. Every application, every authorisation and details of the completion of every operation made under the Act must be registered.

The Act has three components to it: a framework for deciding to authorise a controlled operation; provisions that authorise unlawful conduct in limited circumstances; and a comprehensive set of provisions for reporting and accountability. The reporting and accountability provisions apply to each and every controlled operation.

Within two months after the completion of each controlled operation, the officer in charge of the operation must report to the chief police officer about the operation. The report must articulate the nature of the controlled conduct undertaken during the operation, details of the operation's outcome, the nature, quantity, and transmission of any illicit goods involved, and details of any personal injuries or damage to property occurring as a direct result of the operation.

The chief police officer in turn must provide my office with a report every year which includes: the number of operations authorised; the criminal activities targeted by the operations; and the details of the operations including any arrests and prosecutions arising from the operations.

In turn, I, as the Minister responsible, must table a copy of the report in the Assembly within 15 days of receipt.

The chief police officer must register every application made under the Act, every authorisation made under the Act and details of the completion of every operation.

The Act also empowers the Ombudsman to inspect the records made under the Act and requires the chief police officer to give the Ombudsman any assistance required. The Ombudsman must inspect these records at least once a year and once a year must prepare a public report on the inspection.

In summary, the overarching theme of the Act is accountability and clear lines of authority to engage in a controlled operation.

The oversight role given to the Ombudsman already exists with respect to Commonwealth controlled operation. We have the benefit of six Ombudsman Annual Reports on activities in monitoring Commonwealth controlled operations.

In its 2006-2007 report, in relation to the 27 operations records inspected, the Ombudsman noted that 'overall the records held by the AFP provided a detailed and comprehensive record of controlled operations conducted under Part 1AB of the Act, and were of a high standard'.

The report noted that, as a result of previous Ombudsman comments, the AFP and the Australian Crime Commission had "improved training for staff members in the requirements of the Act, and introduced improved procedures for the management of controlled operations documentation, reporting and accountability mechanisms".

By their very nature, these powers will be used sparingly — in most instances where police seek to penetrate and infiltrate organised crime. The limited number of operations undertaken in other jurisdictions supports this assertion.

The ACT Government also has confidence in the Australian Commission for Law Enforcement Integrity (ACLEI), which is the Commonwealth body empowered to prevent, detect and investigate corruption in the Australian Federal Police, including ACT Policing, and the Australian Crime Commission. ACLEI is an independent statutory body, it is not part of the Australian Federal Police or the Australian Crime Commission.

I agree that government must carefully examine the results of operations and consider the discernible impact on the criminal landscape. In particular, I look forward to considering both the chief police officer's and Ombudsman's reports on future ACT controlled operations.

Simon Corbell
Attorney General
21 August 2008